

# **Bond Case Briefs**

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## **EMINENT DOMAIN - MISSISSIPPI**

### **Alford v. United States**

**United States Court of Federal Claims - January 10, 2019 - Fed.Cl. - 2019 WL 171560**

Owners of property on an oxbow lake brought action against United States Army Corps of Engineers for allegedly effecting a Fifth Amendment taking of their property by raising the water levels in the lake, in order to preserve a nearby levee along the Mississippi River.

The Court of Federal Claims held that:

- Doctrine of necessity did not apply to preclude compensating property owners;
- Doctrine of relative benefits did not apply to preclude compensating property owners;
- General benefit that came from the levee did not offset compensation owed by the government to property owners;
- Just compensation would be calculated based on value of the property immediately before the flooding of the lake;
- Property owners could not recover their business's lost profits as just compensation for the taking;
- Loss and enjoyment of owner's property was not compensable; and
- Owner could not recover for cost of having to evacuate her home pursuant to evacuation orders issued by county.

Doctrine of necessity did not apply to preclude compensating owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, where the Corps considered its options carefully and deliberately over a period of more than a year, it chose the most effective and cost-efficient way of dealing with the problem of sand boils undercutting the levee, and the flooding of the lake served as a temporary stay of the danger while a more permanent solution at a cost of \$2.7 million occurred after the Mississippi River's flood stage abated.

Doctrine of relative benefits did not apply to preclude compensating owners of property on an oxbow lake for taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses; although in the hypothetical world in which a levee breach occurred, the property owners would have been far worse off, along with 10,000 other citizens whose properties would have been flooded, in the real world, all 10,000 other citizens were unaffected, while the owners' properties were significantly damaged, after the Corps determined that flooding their land was an efficient way to solve the problem of sand boils undercutting the levee.

The general benefit that came from either the federal government's building of the levee system along the Mississippi River or the operation of bayou control structure did not offset compensation owed by the government to owners of property on an oxbow lake for taking their land when United States Army Corps of Engineers raised water levels in the lake, in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and

boathouses; although the levee and control structure benefited the owners, as well as most of the Mississippi Delta population and the region's economy, if the benefits citizens got from federal government were to be put on the scale in a taking case, the citizen would always lose, particularly anywhere along the several thousand miles of the Mississippi River system.

Under the before-and-after method for calculating just compensation to owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, the "before" calculation should not rely on the hypothetical expectation that the levee would have breached, but, instead, the "before" calculation was the value of the property immediately before the flooding of the lake.

The \$36,404 in lost profits that property owners' business allegedly sustained from the flooding of their lakeshore property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, fell under the purview of consequential damages, and thus, the owners could not recover lost profits as just compensation for the taking.

The \$19,350 property owner sought from the government, which represented the valuation of the loss and enjoyment of his lakeshore property as a result of the flooding of the property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, were consequential damages, and thus, the owner could not recover that amount as just compensation for the taking.

The owner of property on an oxbow lake could not recover from the federal government for the cost of having to evacuate her home, as just compensation for the taking of her property that resulted when United States Army Corps of Engineers raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, where the county, and not the federal government, issued evacuation orders.